

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-050015

07/01/2016

HONORABLE AIMEE L. ANDERSON

CLERK OF THE COURT

T. Pavia

Deputy

TODD PETERSON, et al.

ROBERT S PORTER

v.

SALVADOR CASTANEDA, et al.

SALVADOR CASTANEDA

25310 N 195TH AVE

WITTMANN AZ 85361

LYNN MARIE BRODERICK

SUSIE CASTANEDA

25310 N 195TH AVE

WITTMANN AZ 85361

**UNDER ADVISEMENT RULING**

On June 29, 2016, the Court held an evidentiary hearing on Plaintiffs' Motion for Preliminary Injunction and Temporary Restraining Order. At the conclusion of the hearing, the Court took the matter under advisement. The Court having considered the allegations of the Verified Complaint, the memoranda and arguments of the parties and considered the evidence presented at the June 29, 2016 hearing finds as follows:

**KASHA PROPERTY**

There was prior litigation in Maricopa County Superior Court cause number CV 2014-002230 ("2014 lawsuit") involving the same parties and the same well. Although Plaintiff, Todd Peterson, was not a party in the 2014 lawsuit, he testified at the evidentiary hearing in that

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matter. At no time during the evidentiary hearing in the 2014 lawsuit did any of the parties or witnesses address with the Court the existence of a 2001 Declaration of Well Easements. At the conclusion of the evidentiary hearing on Plaintiffs' Motion for Temporary Restraining Order in the 2014 lawsuit, Judge Dawn Bergin found that the July 27, 2012 Well Agreement that was recorded with the Maricopa County Recorder's Office on March 13, 2012, provided the Kashas access to and unlimited use of the well located on what is now known as Castaneda's property. As such, Judge Bergin granted the Temporary Restraining Order, granting the Kashas access to the Well in accordance with the terms of the Shared Well Agreement dated July 27, 2012.

As Todd Peterson, Sandra Kasha, Frank Kasha and /or Salvador Castaneda had the opportunity during the evidentiary hearing in the 2014 lawsuit to address the existence of the 2001 Declaration and Grant of Well Easements, but failed to do so, this Court will not disturb the findings of Judge Bergin and validity of the 2012 Shared Well Agreement.

Accordingly, this Court finds that the July 27, 2012 Well Agreement that was recorded with the Maricopa County Recorder's Office on March 13, 2012, provides the Kashas access to and unlimited use of the well located on Lot 3, what is now known as the Castanedas' property.

**PETERSON WELL WATER**

The Court finds the Plaintiffs have failed to make payments for the well water to either the current Well Manager (Castaneda) or the prior Well Manager (Kasha) despite repeated demands. The Court further finds that the current well manager and owner of the parcel of land the well is located on, (Castaneda) disconnected Plaintiffs' water to their parcel of land in early 2016. Plaintiffs, as a result, have incurred approximately \$1000.00 in expenses to haul water onto his property for his families use.

**THE COURT THEREFORE FINDS that:**

- Plaintiffs have a strong likelihood of succeeding on the merits as they have presented valid legal documents to support their claim to well water;
- There is a possibility of irreparable injury to the Plaintiffs due to denial of access to water for their home and property;

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- The balance of hardships tips in favor of the Plaintiffs as their family has been deprived access to running water while despite Plaintiffs not making payment for the use of the well; and
- Public policy supports relief as it favors the enforcement of properly executed and recorded encumbrances on real property. Public policy also supports relief as it favors litigants providing full and truthful information to the Court and not re-litigating the same issues in subsequent legal matters when one litigant may be unhappy with the prior outcome.

Therefore,

IT IS ORDERED denying Plaintiffs' request that the pipeline from the well to the Kashas' real property, Assessor's Parcel Number 503-79-005V be immediately and permanently disconnected.

IT IS FURTHER ORDERED that Defendant Salvador Castaneda III shall restore water to Plaintiffs' lot, Lot 1, from the well located on Castenadas' lot, Lot 3, on or before July 8, 2016.

IT IS FURTHER ORDERED that Defendant Salvador Castaneda III shall have all work necessary done so that Plaintiffs have the pipeline of the same size and dimensions in the same location it was before Plaintiffs water was shut off by Defendant Castaneda.

IT IS FURTHER ORDERED that Defendant Salvador Castaneda III shall have all work performed by an Arizona licensed and bonded contractor, at no cost to the Plaintiffs.

IT IS FURTHER ORDERED that Defendant Salvador Castaneda III shall provide Plaintiffs' attorney with a copy of the written contract with the licensed and bonded contractor(s) performing the work, no later than July 8, 2016.

IT IS ORDERED denying Plaintiffs request requiring Defendants to have Maricopa County inspect and approve the completed work, with inspection and approval to include a water quality test for domestic water usage. If Plaintiffs wants Maricopa County to come out and inspect the work done, they are free to do so. It is important to note that there was no evidence presented to the Court regarding the quality of the water prior to plaintiff's usage being shut off.

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IT IS FURTHER ORDERED that Defendant Frank Kasha provide to Plaintiffs an invoice for the outstanding amount owed by Plaintiffs to Defendant Kasha for the time period he was the Well Manager. Said invoice shall be mailed to Plaintiffs' counsel no later than July 8, 2016. Plaintiffs have until July 22, 2016 to pay the amount in full. Said payment shall be mailed to Defendant Kasha's counsel.

IT IS FURTHER ORDERED that Defendant Salvador Castaneda III provide to Plaintiffs an invoice for the outstanding amount owed by Plaintiffs to Defendant Castaneda for the time period he has been the Well Manager. Said invoice shall be mailed to Plaintiffs' counsel no later than July 8, 2016. Plaintiffs have until July 22, 2016 to pay the amount in full. Said payment shall be mailed to Defendant Kasha's counsel along with the payment Plaintiffs owe to Defendants Kasha. Counsel for Defendant Kasha shall forward payment to the appropriate parties.

IT IS FURTHER ORDERED that the Well Manager, Defendant Castaneda, shall provide to all authorized well users a monthly bill indicating the amount owed for the usage of the water and cost for the operation of the well (including electrical costs, maintenance, repairs), on or before the tenth (10<sup>th</sup>) day of each month. All authorized well users shall pay their respective monthly bill on or before the twentieth (20<sup>th</sup>) day of each month. All payments shall be made by way of cashier's check, money order or personal check and shall be paid directly to the well manager, who is responsible for seeing that all bills associated with the well are paid timely.

IT IS FURTHER ORDERED, pursuant to Rule 65(e) , Ariz.R.Civ.P., that Plaintiffs shall post a bond, with corporate surety, to be approved by the Court, or deposit security with the Clerk of this Court, in the amount of \$2,000.00 for the payment of such costs and damages as may be incurred or suffered by any party found to have been wrongfully enjoined or restrained by this Order.

IT IS FURTHER ORDERED denying Defendant Salvador Castaneda III's Motion to Dismiss.

DONE IN OPEN COURT this 1<sup>st</sup> day of July, 2016.

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Judge of the Superior Court